IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6433 of 2001

with

SPECIAL CIVIL APPLICATION No 6435, 6436 & 6438 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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DINUBHAI KHODABHAI PATEL THROUGH POA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6433 of 2001

MR AJ PATEL for Petitioner No. 1

MS DS PANDIT ASSTT GOVERNMENT PLEADER for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 18/09/2001

COMMON ORAL JUDGEMENT

#. Heard Mr.A.B.Munshi, learned advocate for Mr.A.J.Patel, appearing on behalf of the petitioners in all four petitions and Ms.D.S.Pandit, learned AGP on behalf of the respondents.

#. In all these four matters, wherein RULE has been issued by this Court on 8th August, 2001 and meanwhile, granted ad-interim relief and thereby stayed execution, operating and implementation of the impugned resolution and impugned order as challenged in the respective petition and further restrained the respondent from taking any action pursuant to the said resolution and orders impugned in the respective petition.

#. Since all these petitions have arisen on account of the common order passed by the Collector, Kheda impugned in this group of petition and that involves common question for consideration, all these four matters are heard together and the same are being disposed of by this Common Judgment with the consent of parties.

#. The brief facts giving rise to this group of petitions are as under :-

However, so far as the Special Civil Application No.6433 / 2001 is concerned, the facts are that the land admeasuring acres 25-00 gunthas of Survey No.173 / A / 1 of village Viroja, Taluka Matar, District Kheda was leased to the predecessor-in-title of the petitioner in the year 1949 for the purpose of reclamation for a period of 30 years. On 19th August, 1974, a reclamation lease deed was executed by the Collector, Kheda in favour of the petitioner, wherein the Condition No.1 of the Additional Conditions attached to the said lease deed contemplates that the period of 30 years of the lease shall be deemed to have started from 1949 and according to Condition No.4 thereof, that after the expiry of 30 years period, the reclaimed land would be granted to the holder free of cost, meaning thereby, without charging any amount towards the price of the land. Thus, from the year 1949 to 2000, the petitioner and his predecessor in title put in hard labour and spent huge amount of money for reclaiming the land rendering it cultivable. The petitioner made an application to the Collector, Kheda on date 1st September, 1980 requesting him to grant the land on new and impartible conditions as per the conditions of Reclamation lease dated 19th August, 1974. However, on 15th July, 1999, the Collector, Kheda addressed a letter to the Deputy Secretary to the Govt. of Gujarat, Revenue Department, Gandhinagar to pass appropriate orders for grant of land in question to the petitioner in accordance

with the terms of the reclamation lease. According to the petitioner, the revenue department, Government of Gujarat has passed a resolution to grant the land in question to the petitioner on recovering such amount of the price that may be determined by the District Evaluation Committee. Thereafter, on 23rd July, 2001 the Collector, Kheda passed an order directing the petitioners to deposit the amount shown in the order as a condition precedent for grant of the land in favour of the petitioners. Thereafter, the petitioner has approached the Collector to give details and demanded a copy of the letter dated 15th July, 1999 of the State Government but the Collector, Kheda has refused the demand of the petitioner by his letter dated 30th July, 2001 on the ground that it forms part of the inter departmental correspondence. Resultantly, the petitioners have challenged this order passed by the Collector dated 23rd July, 2001 on the ground the same is contrary to the original reclamation lease deed dated 19th August, 1974 and the same is passed in gross violation of principle of natural justice.

So far the rest of the three matters of this group are concerned, the distinction in the facts is only measurement of the land involved in the respective petition, which are shown as under :

=> SCA No.6435 / 2001 - lands involved is admeasuring Acres 25 - 00 Gunthas.

=> SCA No.6436 / 2001 - lands involved is admeasuring Acres 21 - 06 Guntha.

=> SCA No.6435 / 2001 - lands involved is admeasuring Acres 5 - 0 Guntha.

The rest of the facts in aforesaid three matters are similar and identical to Special Civil Application No.6433 / 2001 and therefore, the same are not mentioned for the sake of avoiding repetition. Moreover, the order impugned in these aforesaid petitions is common as impugned in Special Civil Application No.6433 / 2001.

#. Learned advocate Mr.A.B.Munishi appearing on behalf of the petitioner has submitted that an agreement arrived at between the Collector and petitioner has been placed on record which is at Annexure-A to this petition. Learned advocate Mr.Munshi has further submitted that condition which is attached to the agreement dated 19th August, 1974, wherein Condition No.4 specifically speaks that after expiry of lease period of 30 years, the

petitioner would be entitled the land in question without any price and possession will be given to to the petitioners without any condition. Mr.Munshi, learned advocate has also submitted that by letter dated 15th July, 1999, the Collector, Kheda has also addressed a letter to the Deputy Secretary, Revenue Department in connection with the lands involved in these four matters and after giving all the details, recommendation has been made by the Collector, Kheda to the Deputy Secretary, Revenue Department to the effect that these lands are now required to be given to the petitioner without any price in terms of conditions of the original lease agreement executed between the Collector and the petitioners. The proposal has been made by the Collector, Kheda to the Deputy Secretary with recommendations and thereafter the State Government has passed order taking into the proposal dated 15th July, 1999 received from the District Collector, Kheda in February, 2000 and directed that District Evaluation Committee will fix the price in respect of the land in question and whatever price will be fixed by the Committee on the basis of the Government resolution, such price will have to be fixed and recovered for vesting the land in question in favour of the petitioners and accordingly the petitioners will be required to pay such price. Pursuant to the order passed by the State Government in February, 2000, the District Collector, Kheda passed order on 23rd July, 2001 directing the petitioners to pay the amount in respect of the land in question while fixing Rs.15/- per sq.mtr and accordingly, the respective petitioners are required to pay the following amount shown against their names.

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1. Dinubhai Khodabhai Patel Rs.15,17,625/-
2. Mulshankar Shivram Pathak Rs.15,17,625/-
3. Rambhai Khodabhai Patel Rs.12,83,910/-
4. Smt.Pratimaben Chhotabhai Rs.03,03,525/-

#. Thus, pursuant to the order dated 23rd July, 2001 passed by the District Collector, Kheda impugned in this petition, whereby the District Collector, Kheda has fixed the price in respect of the land in question to be paid by the each respective petitioner. Therefore, the petitioners have challenged these two orders one passed in February, 2000 by the State Government and second order passed by the District Collector, Kheda dated 23rd July, 2001. Learned advocate Mr.Munshi also submitted

that these order are passed by the authorities viz. the State Government and the District Collector without giving any opportunity of hearing to the petitioners. Not only that Mr.Mushi, learned advocate has submitted that the Condition No.4 while granting the lease in favour of the present petitioners, required the authorities to consider that after completion of 30 years lease period, the lands in question are required to be given to the petitioners without any price. That these two aspects have not been taken into account by the State Government while fixing the price in respect of the land in question which have been held by the petitioners more than last 30 years on the basis of the lease deed dated 19th August, 1974. He also submitted that the District Collector, Kheda has at the time of submitting the proposal on 15th July, 1999 to the State Government also recommended to the effect that the lands in question which have been given to the petitioners with retrospective effect for a period of 30 years on the basis of the lease deed. Therefore, the petitioners are entitled to land in question without any price but after considering the proposal from the District Collector, Kheda, the State Government has decided to fix the price for the land in question for conferring the same to the petitioners on the basis of the price decided by the District Evaluation Committee in February, 2000 and consequently, the District Collector, Kheda has passed the order dated 23rd July, 2001.

#. Learned AGP Ms.D.S.Pandit appearing on behalf of the respondents has submitted that according to the Government Resolution, the District Evaluation Committee is entitled to fixe the price of the land in question for giving the same to the petitioners and therefore the Committee has rightly decided the matter and on the basis of the conclusions of the committee, the District Collector while passing the order on 23rd July, 2001 has rightly passed the order and as such, there is no illegality in the orders passed by the State Government and District Collector, Kheda dated 23rd July, 2001. However, she submitted that since the orders in question are passed by the State Government as well as District Collector, Kheda without giving an opportunity of hearing to the petitioners, considering this aspect of the matter, the respondent authorities can be directed to reconsider the matters for giving reasonable opportunity of hearing to the petitioners.

#. This Court has considered the submissions made by the learned advocates for the parties. I have also perused the lease deed which is at Annexure-A to the petition,

wherein it is clearly stated that for 30 years period with retrospective effect with the land in question have been given to the petitioners. However, the condition No.4 which is produced at pg.19 clearly speaks that after completion of 30 years from 1949, the petitioners will be entitled to the land in question without any price as new tenure and impartible lands without any price. Thus, inspite of the specific condition No.4 and though the District Collector, Kheda had forwarded the proposal having based on this Condition, to the State Government recommending that the lands in question are now required to be given to the petitioners without any price, however, the State Government has passed order in February, 2000 wherein it has been decided that the price of the lands in question is required to be fixed by the District Evaluation Committee and on that basis price has been fixed and ultimately the District Collector, Kheda has passed order on 23rd July, 2001. What is more important to note that while passing these two orders, initially by the State Government and the subsequent by the District Collector, Kheda, admittedly, when the same were being passed against the executed lease agreement that too, against the petitioners, no opportunity of hearing was given to the petitioners. It is also apparent that the neither the State Government nor the District Collector, Kheda have at all considered the Condition No.4 attached to the lease deed which is at pg.19 that the petitioners will be entitled to the lands in question after completion of 30 years of leased period. It is also noted that though the proposal sent by the District Collector vide his letter dated 15th July, 1999 was admittedly sent with his recommendations having considered the condition No.4, the State Government ignored said recommendations while passing the order in February, 2000 and on the contrary, issued direction to fix the price as may be determined by the District Evaluation Committee.

#. In view of above matter, in my opinion, both these orders impugned in these petitions have been passed against the petitioners without giving any opportunity of hearing and without taking into consideration the Condition No.4 of the lease deed, deserve to be quashed and set aside. Therefore, if both these orders impugned in these group of petitions passed by the concerned authorities i.e. State Government passed in February, 2000 and the Collector, Kheda dated 23rd July, 2001 are quashed and set aside with direction to authority concerned to reconsider the matter keeping in mind the condition No.4 of the lease deed for allotting the lands in question to the petitioners, will meet the ends of

justice.

##. In the result, all four petitions are allowed. The order passed by the State Government in February, 2000 as well as the order passed by the District Collector, Kheda dated 23rd July, 2001 impugned in the respective petition are hereby quashed and set aside. It is directed to the respondent Nos.1 & 2 to reconsider the matter after giving a reasonable opportunity of hearing to the petitioner of all four petitions and further directed to take into consideration the lease agreement dated 19th August, 1974 including the condition No.4 and shall pass appropriate orders within period of two months from the date of receiving the certified copy of this order. Rule is made absolute in each of the petition to the extent indicate hereinabove. No order as to costs.

Date : 18-9-2001 [H.K.Rathod, J.]

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